THE HONOURABLE DR.JUSTICE G.RADHA RANI

C.C.C.A.No.255 of 2018

JUDGMENT:

This appeal is filed by the appellant who is the defendant No.2 aggrieved by the judgment and decree dated 07.02.2018 in O.S.No.419 of 2008 on the file of the XI Additional Chief Judge, City Civil Court, Hyderabad.

2. The parties are hereinafter referred as arrayed before the trial court.

3. The respondent No.1 is the plaintiff. The plaintiff filed the suit seeking permanent injunction restraining the defendants from using, publishing, printing and passing off the copyright works titled as "My country, My people" (modern epic) "Naa-desham Naa-prajalu" and other related literary works written by late Sri G.Seshendra Sharma, who was the father of the plaintiff claiming that the plaintiff was the absolute owner of the copyright works of his father and claimed notional damages of Rs.50,000/- towards loss of income and loss of reputation along with costs of the suit.

4. The contention of the plaintiff was that he was the second son and last child of late Sri G.Seshendra Sharma and Smt.Janaki. Late Sri G.Seshendra Sharma was

a famous Telugu poet and writer whose works zxwere well identified and were translated into several languages and received innumerable accolades by other academicians, his brethren, the public and literary societies alike during his lifetime. Late Sri G.Seshendra Sharma's works were known for their literary value and public response. Late Sri G.Seshendra Sharma was famously called as Guntur Seshendra Sharma. Out of his love and affection, late Sri G.Seshendra Sharma assigned the copyright works in the literature created by him vide letter dated 02.12.1989 to the plaintiff and transferred all the literary works done by him to the plaintiff. As such, the plaintiff was the sole proprietor of all the literary works written by his father late Sri G.Seshendra Sharma. The plaintiff's father did not retain any rights with him and all rights were transferred to the plaintiff. Pursuant to the letter dated 02.12.1989, the plaintiff had been publishing the books written by his father late Sri G.Seshendra Sharma. The first book was published in the month of April, 1995 titled as "Entakaalam Ee Endamaavulu". The plaintiff had also published the copy of the letter dated 02.12.1989 in the said book. Accordingly, the plaintiff published eight other books titled as "Sahitya Darshini", "Sorabu", "Swarna Hamsa", "Vachindi Votla Rutuvu", "Shodashi, Secrets of Ramayana", "Shabdam nunchi shatabdam varaku" and "Oohalo" containing the original works as well as translation of works written by his father. On 30.05.2007, the plaintiff's father late Sri G.Seshendra Sharma expired. Subsequent to his

father's death, the plaintiff published his father's books posthumously beginning with a book titled "Naa Desham - Naa Prajalu", Adhunika Itihasam, "My Country - My People", modern Indian Epic in the month of October, 2007.

4.1. The plaintiff further submitted that late Sri G.Seshendra Sharma survived by his wife Smt.Janaki and other children. On 26.11.2007, there was a public notice issued in the newspaper, "Times of India" and in "Andhra Jyothi" by Smt.Rajkumari Indira Devi Dhanrajgir claiming as wife of late Sri G.Seshendra Sharma and as the owner of the copyright works, and that the same were transferred to her by virtue of letter dated 05.01.2006. The plaintiff issued a reply to her counsel Dr.P.V.Vijay Kumar, Advocate vide letter dated 27.11.2007. He clarified that the transfer of copyrights vide letter dated 05.01.2006 was absolutely false, unsustainable and it was created and fabricated. By virtue of the letter dated 02.12.1989 written by his father in his own hand writing, the copyrights of his works were conferred to the plaintiff.

4.2. The plaintiff further submitted that he was the sole owner of copy rights of the literary works of his father and no one else can claim the rights. In most of the books, he published the letter dated 02.12.1989 written by his father and also the reply notice to the public notice given by him dated 27.11.2007 in order to caution the people about any misuse and infringement of the copyrights. The plaintiff in

the month of May, 2008 published other books under the title ‘Ruthu Ghosha’, ‘Mande Suryudu’ and compilation of ‘Vivaahala Stories’, ‘Mabbullo Darbar’ Play and miscellaneous poetry. On 02.06.2008, the plaintiff came across the book titled as "My country, My people" (modern epic) (“Naa Desham Naa Prajalu”) published by M/s.Neelkamal Publication Private Limited (the defendant No.1). The book was imitation of the book published by the plaintiff with the same title as ‘Naa Desham, Naa Prajalu’, ‘My country My people’ (modern Indian Epic) which was published in the month of October, 2007 by the plaintiff, much before the publication of defendant No.1. The contents, para wise and page wise were exactly similar to that of the plaintiff's book. It was clear violation and infringement of copyright of the plaintiff. The plaintiff had not licensed any rights of what so ever to defendant No.1 or for that matter to any other person. Without the permission and license from the plaintiff, the defendant No.1 had infringed the copyrights conferred on the plaintiff. The publication of the plaintiff's work was much prior to the publication of the book by defendant No.1. On 10.06.2008, the plaintiff got issued a legal notice to the Manager of Defendant No.1 Company for violating the statutory rights conferred by virtue of Copy Right Act, 1957. On 30.06.2008, the defendant No.1 got issued a reply to the legal notice through his counsel by mere denial. In the reply notice, the publication of impugned book was admitted and it was further submitted that defendant No.1 had entered into

agreement with defendant No.2 for the publication of the books titled as "Naa Desham - Naa Prajalu" and "Adhunika Mahabharatam".

4.3. The plaintiff further submitted that defendant No.2 was not the wife of the plaintiff's father and claiming her rights as wife of the plaintiff's father was nothing but disturbing the harmony of the family relations, because the plaintiff's mother Smt.G.Janaki, the wife of late Sri G.Seshendra Sharma was still alive. In all the publications, the photograph of the family was published. The defendant No.2 was creating false and fabricated documents. In the book titled as “My country My people” published by M/s.Neelkamal Publications Private Limited, it was stated that the book was dedicated to his wife and poetess Rajkumari Indira Devi Dhanrajgir with profound love. It was a false claim to say that the defendant No.2 was the wife of his late father. The father of the plaintiff had high reputation and the books written by him were considered as great epics. The defendant No.2 in collusion with defendant No.1 was encashing the reputation by publishing exactly similar literature, for which the plaintiff had got all rights by virtue of the letter dated 02.12.1989 written by the plaintiff's father.

4.4. The defendant had adopted and copied the whole contents of the plaintiff's book which would amount to infringement of copyrights of the plaintiff in the book titled as "My country My people". The defendant had falsely attempted to

pass off the literature with a malafide intention. The activity of the defendants would amount to passing off and infringement by misrepresenting and creating an impression to the public that the book was published by the plaintiff herein, who was the copy right holder of the said book. The conduct of the defendants was motivated to encash upon such good will and to earn easy profits on the basis of reputation upheld by the plaintiff. The plaintiff would suffer tremendous loss to his reputation and to his business if the defendant was allowed to succeed in illegal manner. The defendant was not entitled to use the good will and reputation by infringing the copyright of the plaintiff, which was a blatant violation of the rights conferred on the plaintiff.

4.5. The plaintiff further submitted that the wrongful act of infringement was attracted for the reasons that:

i. The defendants 1 and 2 had lavishly copied the contents of the literature work by adopting the same title to the book as that of the plaintiff.

ii. The adoption of an identical or a substantially similar literature would amount to infringement of the statutory and common law rights.

iii. The contents of both the books were exactly similar.

iv. The class of purchasers and channel of sale were same.

v. Since the contents of the books were same and were being sold under the same title, there would be every likelihood of confusion and deception.

5. As such, filed the suit claiming the above reliefs.

6. The defendant No.1 filed written statement contending that the suit filed by the plaintiff was not maintainable. The Court was not having jurisdiction to entertain the suit. The plaintiff had to go before the Letter Patent Board situated at Madras. He further denied the contents of the plaint and contended that the assignment letter alleged by the plaintiff was a fabricated document. Even if the assignment letter was considered as true, as per the Copy Right Act, the validity of the letter was only for five years and not beyond that. Without admitting the alleged letter obtained by the plaintiff, he further contended that during the lifetime of late Sri G.Seshendra Sharma, the plaintiff did not publish his literary works and only after the death of Sri G.Seshendra Sharma, the plaintiff was claiming right over the said alleged assignment of copy right. He further submitted that during the lifetime of Sri G.Seshendra Sharma, he married the 2nd defendant and retained his rights and also transferred the rights to the 2nd defendant by letter dated 05.01.2006 and the right was given through a letter to the 2nd defendant for a period of 30 years and after the said letter was issued by late Sri Seshendra Sharma, the defendant No.1 entered into an agreement with defendant No.2 on 11.04.2008,

wherein she gave right to print and publish the works of the books titled as “Naa Desham Naa Prajalu” (Aadunika Itihasam), “My country My people" (Modern Epic), but no copy right was given to defendant No.1 except for publishing and selling the books. The copy right was given to the 2nd defendant by her late husband during his lifetime.

6.1. The defendant No.1 further contended that the relationship of Smt.Janaki and other children of late Sri G.Seshendra Sharma was not having any bearing on the subject matter of the suit. He admitted that on 26.11.2007, the 2nd defendant issued public notice in Times of India and Andhra Jyothi claiming that she was the wife of late Sri G.Seshendra Sharma and he being the author of the book had transferred his right i.e. copyright on 05.01.2006 while he was alive that too for a period of 30 years. The plaintiff also gave a reply with false allegations. He further contended that the plaintiff's own sister had given a public advertisement in the newspaper that the 2nd defendant was the wife of late Sri G.Seshendra Sharma. As such, the allegation made by the plaintiff would not hold any water. He contended that the letter dated 02.12.1989 was a brought up document and called for strict proof of the same. No prudent man would issue a letter on a piece of paper, which would clearly indicate that it was a brought up document. He further contended that defendant No.1 had not violated any copyright Act and he was only

a publisher and seller and he was not the author of the book and as per the agreement dated 11.04.2008, he was publishing the books and was selling in the market and prayed to dismiss the suit.

7. The second defendant filed a memo adopting the written statement of defendant No.1, but subsequently filed an I.A to permit her to file written statement in addition to the memo filed by her. She also filed I.A.No.860 of 2010 seeking permission to file an independent counter in the I.A filed under Order XXXIX Rule 1 and 2 of CPC. The trial court dismissed both the applications vide separate orders dated 21.01.2011. Against the said dismissal, the defendant No.2 (the appellant herein) preferred C.R.P.Nos.722 and 738 of 2011. Both the Civil Revision Petitions were allowed. As such, the defendant No.2 filed an additional written statement contending that the plaintiff had not approached the Court with clean hands. He misrepresented before the Court that he was the copyright holder. The document purporting to grant copyright in favor of the plaintiff and relied by him was a false and fabricated one. He was well aware that late Sri G.Seshendra Sharma had granted copyright in favor of defendant No.2 way back in the year 2002 and that many of his books and translations were published by defendant No.2 during his lifetime. Sri G. Seshendra Sharma had revoked all his earlier copy rights on 05.01.2006 and granted copyright of all published and un-published

works of him to defendant No.2. The plaintiff had conveniently kept silent until his father passed away and filed a false case with a malicious intent to harass a old lady of high repute. The dispute was only with regard to the assignment of copyright but not infringement. As such, the Court would not have jurisdiction to entertain the suit under Section 19(A) of the Copyright Act. In a case of dispute of assignment of copyright, a complaint had to be filed before the Copyright Board. The suit was squarely barred by limitation in view of the fact that the plaintiff was fully aware that the defendant No.2 in 2002 itself was holding copyright given by her late husband Sri Seshendra Sharma and had given license to Sahitya Academy for publication of Kannada translation of Aadunika Mahabharatham, but kept silent till the death of his father. The plaintiff was using the excuse of public notice to overcome the ground of limitation. The plaintiff challenged the suit with a malafide intention to harass defendant No.2 and concealed vital information of the fact that his father revoked all earlier copyrights and granted copyright in favor of defendant No.2. The plaintiff was blatantly violating the status quo order granted by the Court on 20.08.2008 and was publishing and selling various books of his father under the alleged copyright. Further, he was also spreading malicious defamatory information about defendant No.2 both in electronic media as well as in the books he had published. Assuming without admitting that defendant No.2 had infringed his copyright, the plaintiff had acquiesced by sitting silent when the

defendant was presumably invading his rights and spending money on it. The plaintiff had not taken any positive steps or acts in all these years. His mere silence or inaction would show latches on his part. The plaintiff knowingly allowed defendant No.2 to spend money and build up an important chain for publication, promotion and propagation of his father’s work. The plaintiff was stopped by his acquiescence. The acquiescence to the alleged infringement would amount to clear consent. The acquiescence was such that it could safely be inferred as license sufficient to create a new right in defendant No.2. The plaintiff’s inordinate delay in taking steps would indicate that he did not have any interest at all. Assuming without admitting that late Sri Seshendra Sharma had given copyright in favor of the plaintiff, the same would be valid for five years. No publication had come forth in the first 12 months. Even according to the plaintiff, he did not bother to publish any of his father’s works until 1995, when the copyright would have lapsed. Furthermore, the plaintiff published few books of late Sri Seshendra Sharma in violation of copyrights assigned by the poet revoking all previous transfers in favor of defendant No.2. In the books ‘Rutu Ghosha’ and ‘Sahitya Kowmudi’ published by the plaintiff in the year 2008, he stated that copyright was given in his favor by his father on 02.12.1989 by way of Will. A Will would come into effect only after the lifetime of the testator. As per law, a testator can always revoke his will and exercise his rights of copyright. During the

lifetime of the author / poet, Sri G.Seshendra Sharma himself revoked the copyright. It was a clear proof of revocation of all previous transfers by exercising his right as a copyright holder and transferred the same in favor of defendant No.2. The defendant No.2 in turn gave license to Sahitya Academy to publish the book “Adhunika Mahabharatam” on 14.08.2002.

8. The defendant No.2 was married to Sri G.Seshendra Sharma on 16.06.1971 at Hallibeed in Karnataka. She had been promoting Telugu literature even before her marriage to Sri Seshendra Sharma and had taken very keen interest in all his work. Her in-depth understanding of the poet and his works could be understood from the tribute paid by her in "Seshendra: The Poet, My Husband" published in Indian Literature - Sahitya Academy's bi monthly journal (May - June, 2008). The poet / author had given a copyright to defendant No.2 on 14.08.2002 and confirmed the same revoking all earlier copyrights on 05.01.2006. The defendant No.2 had all legal rights under the copyright given to her by her husband Sri G.Seshendra Sharma vide letter dated 05.01.2006. The defendant No.2 entered into a valid and legal agreement with defendant No.1 for publication of the book “My country My people”. It was actually the plaintiff who had infringed the defendant's copyrights. The defendant No.2 and Sri G.Seshendra Sharma were married on 16.06.1971 and they lived together at the defendant No.2's residence for

more than 36 years. The defendant No.2 in her own right was a well-known poetess, writer and a socially reputed person. She would not need to encash on the reputation of anybody else. It was the defendant No.2's love for Telugu Literature that made her promote and propagate her late husband's works. It was the plaintiff who had no standing in the society, who was now seeking to encash on the glory of his father after his death. The defendant No.2 was within her right to get the books of her husband published by defendant No.1. A reading of the agreement with defendant No.1 would show that the defendant No.2 had agreed to buy back books to a tune of Rs.55,000/- which had already been paid. The defendant No.2 unlike the plaintiff was not in dire requirement to earn easy profits or otherwise. The defendant's sole interest was in keeping the works of her beloved husband alive and spreading the same for the generations to come and prayed to dismiss the suit.

9. The plaintiff filed a rejoinder to the additional written statement filed by defendant No.2. He contended that the plaintiff had not bonafidely come forward to the Court by raising any counter claim and had not shown any proper explanation to show the circumstances which prevented her from the claiming the alleged copyrights by way of either counter claim or by way of filing separate suit for her rights. The rights conferred by his father were unlimited without there being any time frame and the publication of the books was completely within his

own domain and it was his prerogative right whether to publish or not to publish the books and when to publish. There was no specific stipulation indicating him to publish the books in the first twelve months from the date of transferring the copyrights by his father in his favor and prayed to decree the suit.

10. Basing on the above pleadings, the trial court framed the issues as follows:

i. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

ii. Whether the plaintiff is entitled to direct the defendants to pay a sum of Rs.55,000/- towards notional damages, which was claimed for the damages and loss of income and loss of reputation owing to the unethical acts of defendants?

iii. To what relief?

11. The plaintiff examined himself as PW.1 and got marked Exs.A1 to A12. The Assistant Director of Telangana State Forensic Science Laboratory (for short "TSFSL") was examined CW.1 and Ex.X1 was marked through him. The defendant No.1 examined himself as DW.1. The defendant No.2 was examined as DW.2 and Exs.B1 to B12 were marked on behalf of the defendants.

12. On considering the oral and documentary evidence on record, the learned XI Additional Chief Judge, City Civil Court, Hyderabad observed that Ex.A2, the

authorization letter, under which the plaintiff was claiming copyrights dated 02.12.1989 was admitted by defendant No.2 during her cross-examination, as the said letter was in the hand writing of Sri G.Seshendra Sharma.

13. As the plaintiff contended that Ex.B3 letter dated 05.01.2006 (which was shown as Ex.B6 in the appendix) was a forged and fabricated document, the same was referred to TSFSL to compare with Ex.A2 and the laboratory issued a report Ex.X1 stating that the signature on Ex.X1 was printed through a printing process and it was not executed with any writing instrument and the same was proved by the plaintiff by examining the Assistant Director of TSFSL as CW.1.

14. Thus, the evidence of CW.1 and the report marked under Ex.X1 would show that Ex.B3 (Ex.B6) was not signed by late Sri G.Seshendra Sharma and his signature was printed through a printing process. The hand writing in Ex.A2 was admitted by defendant No.2 herself in her cross-examination. As such, Ex.B3 (Ex.B6) was not executed by late Sri G.Seshendra Sharma. The defendant No.2 could not claim any copyrights on the literary works of late Sri G.Seshendra Sharma. The plaintiff being the son of late Sri G.Seshendra Sharma and who acquired the copyright from his father through Ex.A2 was entitled to protect his copyrights over the literary works of his father and was entitled for perpetual injunction as prayed for.

15. The trial court also further observed that the plaintiff by publishing the books written by his father during his lifetime in the month of April, 1995 itself exercised his rights. The trial court further observed that the contention that the plaintiff had acquiesced his right in favor of defendant No.2 as he failed to exercise his right within five years was not valid. As per Section 19(7) of the Copy Right Act, 1957, the sub-sections 2 to 6 of Section 19 were not applicable to the assignments made before coming into force of the Copy Right Act (Amendment) Act, 1994, which came into force with effect from 10.05.1995 and since the assignment under Ex.A2 was made on 02.12.1989 prior to the Amendment Act, 1994, the provisions under sub-sections 4 and 5 of Section 19 of Copyright Act were not applicable to Ex.A2.

16. The trial court denied the relief of damages to the plaintiff as no evidence was adduced to establish the same and decreed the suit in part.

17. Aggrieved by the said decreetal of the suit in part granting injunction against her, the defendant No.2 preferred this appeal contending that the trial court failed to appreciate the fact that the appellant - defendant No.2 was publishing the books of late Sri G.Seshendra Sharma ever since the time of their marriage on 16.06.1971 and her late husband granted copyright in her favor way back in 2002 by addressing a letter dated 14.08.2002 to Sahitya Academy regarding publishing of

book "Adhunika Mahabharatam" and the appellant granted license to the Sahitya Academy under Ex.B12.

18. The trial court failed to appreciate that late Sri G.Seshendra Sharma revoked all his previous assignments and granted copyright of all his literary works to the appellant herein on 05.01.2006 and failed to appreciate the paper publication dated 04.12.2007 issued by the daughter of late Sri G.Seshendra Sharma by name Smt. G.Revathi on her behalf and also on behalf of all other family members, referred to as Ex.B8 in the judgment (marked as Ex.B5 in the appendix of evidence). The trial court ought not to have believed the authenticity of Ex.A2 dated 02.12.1989. The fact that the appendix of evidence was not in consonance with the evidence marked through the witnesses would amply show non-application of mind. The trial court failed to critically analyze the cross-examination of CW.1 and the admissions made by PW.1 in his cross-examination and failed to note his in-consistent statements. The trial court did not appreciate the cross-examination of DW.2 in a proper perspective. The trial court had not assigned any reasons for disbelieving Ex.B8 (letter addressed by late Sri G.Seshendra Sharma to Sahitya Academy dated 14.08.2002) and Ex.B12 (the license granted in favor of the appellant by Sahitya Academy, dated 14.08.2002) and ignored such important documents.

19. The trial court ought to have given a finding that Ex.B3 (Ex.B6) dated 05.01.2006 was a genuine assignment in favor of the appellant. It was laminated only for the purpose of preservation. The report under Ex.X1 dated 22.09.2017 was erroneous and false and the same ought not to have given any credence. The trial court failed to appreciate that the tests conducted by the Assistant Director, TSFSL were vague and inconclusive and failed to appreciate that the opinion of an expert was not final and the Court ought to have independently examined the exhibits to come to a logical, legal and correct conclusion and prayed to set aside the judgment and decree rendered in O.S.No.419 of 2008 dated 07.02.2018 by the XI Additional Chief Judge, City Civil Court, Hyderabad.

20. Heard Smt.Dr.Y.Padmavathi, learned Senior Counsel for the appellant - defendant and Sri Dr.Venkat Reddy Donti Reddy, learned Senior Counsel for the respondent No.1 - plaintiff.

21. The learned Senior Counsel for the appellant contended that Ex.A2 was not a valid document. It was not executed by late Sri G.Seshendra Sharma. As per the plaintiff's deposition, it was not executed at the Palace, whereas the Ex.A2 was showing the address as Gyanbagh Palace. The evidence of PW.1 that he did not enquire with Miss Revathi regarding her paper publication was not at all convincing. All other legal heirs including their mother categorically stated that

the appellant (defendant No.2) was the legally wedded wife and referred Smt.G.Janaki as ex-wife. The family member certificate was issued by the MRO at the request of the plaintiff only for the purpose of settlement of pension benefits and the same was not valid for property claims or any other purpose. Sri G.Seshendra Sharma during his lifetime executed Ex.B12 dated 14.08.2002 exercising his rights as copyright owner of "Adhunika Mahabharatham" and nominated his wife Rajkumari Indira Devi (appellant) as copyright holder. Even if at all, there was any assignment dated 02.12.1989, the author revoked the assignment in favor of the appellant and nominated her as his copyright holder. In view of revocation coupled with newspaper notification of other legal heirs of Sri Seshendra Sharma by way of Ex.B8 dated 04.12.2007, it was abundantly clear that the plaintiff was the copyright holder. The appellant published "Adhunika Mahabharatham" even before the alleged execution of Ex.A2 way back in 1985 and reprinted it in 1992 and 1993. She also published 'Janavamsam' in the year 1993 through 'Forum for Indian Languages' from Gosha Mohal, Hyderabad. The copies of the said book were available at Vishalandhra Publishing House, Hyderabad and its seven branches. The plaintiff had not challenged the said publications within a period of three years, in which Sri Seshendra Sharma was shown as copyright holder. Any cause of action, if at all, for infringement would arise in 1991, 1992, 1993 when "Adhunika Mahabharatam" was reprinted and

'Janavamsam' was published through Forum for Indian Languages under auspices of Gyan Bagh Palace, the copies made available at Vishalandhra Publication at several places were to the public knowledge. As such, the suit was barred by limitation. The cause of action would not arise from 2008, but, from the dates of the above publications. The judgment of the trial court was erroneous. The trial court failed to appreciate that Ex.A2 dated 02.12.1989 was not acted upon for several years by the plaintiff and Exs.B5 and B6 had to be considered for inconsistent pleadings of the plaintiff. Ex.B12 dated 14.08.2002 would clinchingly prove that the late author revoked the execution of Ex.A2. The trial court did not frame proper issues and did not give proper findings on questions of limitation, acquiescence and estoppel. The trial court forwarding Ex.A2 as the standard signature was not proper, as the appellant denied the existence of Ex.A2 in her deposition and written statement. The expert had not opened the laminated document. The expert could not identify the printer. He was not well-versed with printing processes. No chemical tests were conducted by him. His findings based on optical examination and observation were insufficient and relied upon the judgments of the Hon'ble Apex Court in **Jai Narain Parasrampuria (Dead) and Others v. Pushpa Devi Saraf and Others**[1], **The State of Gujarat v. Vinaya**

[1] (2006) 7 SCC 756

Chandra Chhota Lal Pathi[2]**, Tomaso Bruno and Another v. State of Uttarpradesh**[3]**, Prem Prakash @ Lillu and Another v. State of Haryana**[4]**, State of Uttar Pradesh v. Krishna Master and Others**[5].

22. The learned Senior Counsel for the respondent No.1 - plaintiff on the other hand contended that several material admissions were made by the appellant in her cross-examination. She admitted that no document was filed by her to show that she was married to late Sri G.Seshendra Sharma on 06.06.1971. She admitted that she was aware of the marriage between late Sri G.Seshendra Sharma and G.Janakamma. She confirmed the authenticity of Ex.A2 dated 02.12.1989 by confirming the hand writing of late Sri G.Seshendra Sharma and admitted that Ex.A2 was written by Sri G.Seshendra Sharma in favor of the respondent No.1 - plaintiff with regard to his right towards the copyrighted works and admitted that Ex.A2 was not a fabricated document and about the passing off of the copyrighted works in favor of the respondent No.1 - plaintiff. She also admitted that the letter / license of Sahitya Academy (Ex.B12) was not in original form.

23. He further contended that the signing of Ex.A2 at Gyan Bagh Palace was irrelevant. Mere statement of any individual / person could not give the appellant

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[2] AIR 1967 SC 778
[3] (2015) 7 SCC 178
[4] (2011) 11 SCC 687
[5] (2010) 12 SCC 324

herein the legal status as the wife of late Sri G.Seshendra Sharma. He further contended that the intellectual property rights were also inheritable as any other property, Sahitya Academy was not the competent authority to issue any copyright. It was not a relevant document to certify the copyright owner. The said document was not signed by any authorized signatory of Sahitya Academy. The newspaper publication would not confer ownership of copyrights. The publication of books was a continuous cause of action. As such, the suit was not barred by limitation. The cause of action arose on the dates given in the plaint and it was continuous. The improper framing of the issues by the trial court could not be raised at the stage of appeal. Having participated in the suit proceedings and having contested, raising the contention about non-framing of issues was irrelevant. The allegations with regard to expert opinion could not be agitated at this stage, as the expert was cross-examined by the counsel for the appellant - defendant No.2. The allegations raised on the grounds of limitation, latches, acquiescence and estoppel were completely irrelevant. The citations referred were not relevant as none of the citations were in line with the subject matter of copyright. The trial court considered all the contentions raised by the appellant and gave a well-reasoned judgment and prayed to dismiss the appeal.

24. During the course of arguments, the appellant filed I.A.No.1 of 2023 under Order XLI Rule 27 seeking permission of the Court to adduce additional evidence and to take on record, the letter addressed by Sri G.Seshendra Sharma to the Secretary, Health and Municipal Administration, Government of Andhra Pradesh dated 17.10.1971 as Ex.B13, and the cover page and relevant pages of the book 'Janavamsam' printed in the year 1993 by Indian Languages Forum, Gyan Bagh Place as Exs.B14 and the cover page and relevant pages of the book 'Adhunika Mahabharatam' printed & re-printed by the petitioner – appellant in the years 1985, 1992 and 1993 by Indian Languages Forum, Gyan Bagh Palace as Ex.B15. The appellant filed an affidavit in support of the application stating that inspite of exercise of due diligence, the above said documents could not be traced during the course of trial, as such, the same could not be filed before the trial court. But, they were required to come on record as additional evidence in view of challenge to the validity of the marriage of the appellant and in proof of her contention on the aspects of limitation, acquiescence and estoppel and prayed to permit her to bring them on record as Exs.B13 to B15.

25. The learned counsel for the respondent No.1 - plaintiff vehemently opposed the application stating that no plausible explanation was given by the appellant to receive the documents as additional evidence at the stage of appeal. When the

evidence on record was sufficient to adjudicate the matter, Order XLI Rule 27 of CPC could not be invoked and additional evidence could not be received as a matter of right. The alleged documents sought to be filed as additional evidence were neither relevant nor germane to decide the issues on record. The said documents were completely irrelevant and un-concerned to the present appeal proceedings. Ex.B13 was a created and fabricated document. There was no authenticity to such letter since there was no endorsement by any of the statutory authorities in receipt of the same. No law permits consent to the second marriage either by the first wife or by any of the statutory authorities. Admittedly, the first wife Smt.Janaki was still alive. The said document would not give any legal sanctity to the appellant as second wife of late Sri G.Seshendra Sharma. The alleged publication of the two books under the name 'Janavamsam' and 'Adhunika Mahabharatam' were totally irrelevant, immaterial and unrelated to the facts or the issues involved in the present appeal. The point of limitation, acquiescence and estoppel could not be proved by producing the alleged documents as additional evidence. The appellant was prolonging the matter by burdening the Court with irrelevant documents and prayed to dismiss the same.

26. Under the scheme of the Code of Civil Procedure, 1908, it is the trial court before whom parties are required to adduce their evidence. But in three exceptional

circumstances additional evidence can be adduced before the appellate court, as provided under Section 107(1)(d) read with Rule 27 of Order XLI of the Code. Rule 27 of Order XLI reads as under: -

> **27. Production of additional evidence in Appellate Court. –**
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> (1) *The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if –*
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> (a). The Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
>
> (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, The Appellate Court may allow such evidence or document to be produced, or witness to be examined.
>
> (2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

27. The learned counsel for the respondent - plaintiff relied upon the judgment of the Hon'ble Apex Court in **A.Andisamy Chettiar v. A.Subburaj Chettiar**[6], wherein it was held that:

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[6] (2015) 17 SCC 713

> "12. From the opening words of sub-rule (1) of Rule 27, quoted above, it is clear that the parties are not entitled to produce additional evidence whether oral or documentary in the appellate court, but for the three situations mentioned above. The parties are not allowed to fill the lacunae at the appellate stage. It is against the spirit of the Code to allow a party to adduce additional evidence without fulfillment of either of the three conditions mentioned in Rule 27."

14. In **North Eastern Railway Admn. v. Bhagwan Das** [(2008) 8 SCC 511], this Court observed thus:-

> "13. Though the general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary is not admitted but Section 107 CPC, which carves out an exception to the general rule, enables an appellate court to take additional evidence or to require such evidence to be taken subject to such conditions and limitations as may be prescribed. These conditions are prescribed under Order 41 Rule 27 CPC. Nevertheless, the additional evidence can be admitted only when the circumstances as stipulated in the said Rule are found to exist..."

15. In **N. Kamalam (dead) and another v. Ayyasamy and another** [(2001) 7 SCC 503], this Court, interpreting Rule 27 of Order XLI of the Code, has observed in para 19 as under: -

> "19. ..... the provisions of Order 41 Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omission in the court of appeal – it does not authorize any lacunae or gaps in the evidence to be filled up. The authority and jurisdiction as

> conferred on to the appellate court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way."

> 16. In **Union of India v. Ibrahim Uddin and another** [(2012) 8 SCC 148], this Court has held as under: -
>
> > "49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced."

28. He further relied upon the judgment of the Hon'ble Apex Court in **Union of India v. Ibrahim Uddin and Another**[7], wherein it was held that:

> "37. The Appellate Court should not, ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of

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[7] (2012) 8 SCC 148

proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. (Vide: **Haji Mohammed Ishaq Wd. S. K. Mohammed & Ors. v. Mohamed Iqbal and Mohamed Ali and Co.,** AIR 1978 SC 798).

38. Under Order XLI , Rule 27 CPC, the appellate Court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said Court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate Court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate Court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate Court is empowered to admit additional evidence. [Vide **Municipal Corporation of Greater Bombay v. Lala Pancham** [AIR 1965 SC 1008]".

39. It is not the business of the Appellate Court to supplement the evidence adduced by one party or the other in the lower Court. Hence, in the absence of satisfactory reasons for the non- production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal. (Vide: State of **U.P. v. Manbodhan Lal Srivastava**, AIR 1957 SC 912; and **S. Rajagopal v. C.M. Armugam & Ors.,** AIR 1969 SC 101).

40. The inadvertence of the party or his inability to understand the legal issues involved or the wrong

> advice of a pleader or the negligence of a pleader or that the party did not realize the importance of a document does not constitute a "substantial cause" within the meaning of this rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.
>
> 41. The words "for any other substantial cause" must be read with the word "requires" in the beginning of sentence, so that it is only where, for any other substantial cause, the Appellate Court requires additional evidence, that this rule will apply, e.g., when evidence has been taken by the lower Court so imperfectly that the Appellate Court cannot pass a satisfactory judgment."

29. In its recent judgment in **Sanjay Kumar Singh v. State of Jharkhand**[8], the Hon'ble Apex Court held that:

> "7. It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate court is to be considered is, whether

[8] (2022) 7 SCC 247

> or not the appellate court requires the additional evidence so as to enable it to pronouncement judgment or for any other substantial cause of like nature."

30. In the light of the above principles, when the documents sought to be introduced as additional evidence are considered, the alleged documents were within the knowledge and approach of the appellant and the appellant had not exercised due diligence and not gave satisfactory reasons for not producing the said documents during trial. Whether the appellant is the second wife of late Sri G.Seshendra Sharma or not is not relevant for deciding the appeal. The documents sought to be marked as Exs.B14 and B15 are also not necessary to prove the aspects of limitation, acquiescence and estoppel at the stage of hearing the first appeal, as without these documents also, the said aspects can be considered. As such, it is considered fit to dismiss this application as the above documents are not necessary and helpful to the Court in deciding the appeal.

31. On hearing the contentions of the learned counsel for the appellant and the learned counsel for the respondent No.1 - plaintiff, the points that arise for determination in this appeal are:

1. Whether the plaintiff is the owner of the copyright works of late Sri G.Seshendra Sharma by virtue of Ex.A2?

2. Whether late Sri G.Seshendra Sharma had revoked the copyrights assigned to the plaintiff and re-assigned to defendant No.2 under Ex.B6?

3. Whether the suit was barred by limitation, acquiescence and estoppel?

4. Whether the judgment of the trial court is in accordance with law and facts on record or whether the same needs any interference by this Court?

5. To what result?

32. Before proceeding to answer the above issues, it is also considered necessary to have an overview about the Copyright Law in India.

33. Copyright is an intellectual property right given by law to the creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. It can be understood as a bundle of rights that include the right of reproduction, communication, adaptation and translation of the work. The copyright ensures protection to the rights of authors over their creations and aims at rewarding creativity.

34. The Copyright Act, 1957 along with Copyright Rules governs the laws relating to Copyright protection in India. Copyright can be claimed by either the creator or the person who has inherited the rights of ownership from the original

creator or an agent, who is allowed to act on behalf of the creator. The Copyright Act provides an economic right to the author to reproduce the work, to issue copies, to perform or communicate it to the public, to make any cinematograph film or sound recording or to make any adaptation or translation of the work. The Act also provides a paternity right - right to claim authorship of the work; an integrity right - right to protect ones honor and reputation and a general right - right to not have a work falsely attributed to oneself. These are called moral rights and they remain with the author even after assignment of the copyright. India being a signatory to the Berne Convention for the protection of literary and artistic works, 1886 (Berne Convention) is obligated to protect the copyrights. As per Berne Convention, the registration of copyright is not mandatory. In India too, it is not mandatory for one to register a copyright for availing the protection of law. As such, the Copyright Act, 1957 also does not mandate registration. In case of original literary, dramatic, musical and artistic works, the time period of copyright in India is 60 years in addition to the author's life span.

35. As per Section 18 of the Copyright Act, 1957, the creators hold the power to assign their rights to any other individual. The assignee gains all the rights associated with the copyrighted work. Once the assignee receives certain rights encompassed within the copyright, they are considered as rightful owners of those

specific rights. The assigner can retain ownership of any unassigned rights. Section 18 also makes it clear that the assignee has to exercise his rights provided under any one of the sub-sections of the Sections within a period of one year.

36. As per Section 19 of the Copyright Act, 1957, an assignment of copyright must fulfill certain requirements to be considered legally binding:

1. It must be in writing and bear the signature of the assigner or his authorized representative.

2. The assignment document should identify the specific work being assigned and specify the nature of the rights being transferred.

3. It should define the duration and territorial scope of the assignment.

4. Additionally, the document must address the issue of royalty payments, if applicable, detailing the amount payable to the author or their legal heirs throughout the duration of the assignment.

5. The terms of the assignment can be revised, extended or terminated by mutual agreement.

6. In the absence of a stipulated assignment period, the standard duration will commence from the date of the assignment and last for 5 years.

7. The ownership can be assigned either fully or partially.

8. In the absence of specific information regarding the territorial scope of the assignment, it will be presumed to cover the entire area of India.

37. Once, the assignment is made; the assignee is legally recognized as the owner of the copyright under the above provisions.

38. As per Section 19(4), if the assignee fails to do so, his rights will be lapsed unless otherwise mentioned in the assignment.

39. Section 20 addresses the transfer of copyright ownership through operation of law when the owner passes away, particularly in cases where no Will has been executed. In such instances, the copyright becomes part of the deceased owner's estate and is inherited by their personal representative. Furthermore, Section 20 clarifies that if an individual is entitled to receive copyright through a request, and the work in question had not been published before the testator's death, there are specific considerations. Unless the testator's Will or any codicil thereto states otherwise, the intended beneficiary is deemed to have copyright in the work to the extent that the testator held copyright immediately prior to their demise. This provision ensures that the rights to the copyright are appropriately passed on to the rightful recipient, as per the intention of the deceased copyright owner.

40. Section 30 of the Act addresses the voluntary licensing of copyright. The copyright holder has the authority to issue licenses for any exclusive rights pertaining to their work.

41. The learned counsel for the respondent No.1 - plaintiff relied upon the judgment of the High Court of Calcutta in **Jogendra Nath Sen v. State**[9], wherein it was held that:

> "3. Under Section 14 of the Act, Copyright in a literary work, includes, among others, the exclusive right to publish the work. But the author, as owner of the right to publish, may assign the said right to another under Section 18(1) and Section 18(2) provides that when such a right, say, to publish the work, is assigned to another, the assignee, as respects the right so assigned, is to be treated "as the owner of the Copyright and the provisions of the Act shall have effect accordingly". And, in such a case, the author or the assignor shall, only as respects the other rights specified in Section 14, which are not so assigned, continue to be treated as the owner of the Copyright. In other words, if an author assigns the right to publish his work to another, it is the latter who thenceforward is to be treated for all purposes as the owner of the Copyright as respects the right to publish, even though the author may still continue to be the 'owner of Copyright' as respects all the other rights, except the right to publish. And as respects the 'right to publish' so assigned, even the author, though still owning all the other rights may be held guilty for infringement for publication without the latter's consent."

42. Thus, assignment involves transfer of ownership and a bundle of rights associated with the copyrighted work. It grants the assignee the sole authority and exclusive right allowing them to control and enforce the economic rights of the work. On the other hand, licensing allows the copyright owner to grant permission

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[9] 1991 - AIR (Cal)-0-308

to another person by license while retaining ownership. The license agreement specifies the terms including the quantum of royalty and the mode of license.

43. Keeping in view the law and the principles stated under it, the case needs to be decided.

P O I N T Nos.1 & 2:

1. Whether the plaintiff is the owner of the copyright works of late Sri G.Seshendra Sharma by virtue of Ex.A2? And

2. Whether late Sri G.Seshendra Sharma had revoked the copyrights assigned to the plaintiff and re-assigned to defendant No.2 under Ex.B6?

44. The contention of the plaintiff was that he was the second son and last child of late Sri G.Seshendra Sharma and his father out of his love and affection had assigned the copyright works in the literature created by him to the plaintiff under a letter dated 02.12.1989 in his own hand writing. The same was marked by the plaintiff as Ex.A2. Ex.A2 reads as follows:

> "I. G.Seshendra Sharma do hereby transfer all the copyrights of all the books written by me as poet and author in Telugu together with their translations to my son, G.Satyaki (plaintiff). This comes into effect forthwith this date i.e. 02.12.1989, his birthday."
>
> With Love and Affection
>
> Sd/-
>
> Dated: 02.12.1989
>
> (GUNTURU SESHENDRA SHARMA).

The above letter was addressed by Sri G.Seshendra Sharma on his letter head with his address mentioned as Gyan Bagh Palace, Gosha Mahal, Hyderabad dated 02.12.1989.

45. The above document is in writing signed by the creator, author or owner of the literary works and through this letter he transferred all the copyrights of all the books written by him in Telugu together with their translations to the plaintiff. It does not speak of any duration or the territorial extent of the assignment or the amount of royalty payable to the author. It shows that out of love and affection towards his son, the author transferred all the rights over the works written by him till that date to the plaintiff. It does not speak of any future works or speaks of any rights retained by the author in those works. PW.1 in his cross-examination stated

that he was claiming copyright basing on the letter written by his father as son of late Sri G.Seshendra Sharma.

46. The contention of defendant No.2 was that the poet / author had given copyright to defendant No.2 on 14.08.2002 and confirmed the same revoking all earlier copyrights on 05.01.2006 and got marked Ex.B6 in support of her contention. Ex.B6 reads as follows:

Whom so ever it may concern

Transfer of Copyright

> "I, Guntur Seshendra Sharma, on this the 5th day of January, 2006 at Mumbai, do hereby transfer the copyrights of all my literary works, both published and unpublished including their translation to my wife Rajkumari Indiradevi Dhanrajgir for over a period of 30 years. This transfers cancels all the previous transfers."
>
> Date: 05.01.2006
>
> Mumbai.
>
> Sd/-
>
> (Guntur Seshendra Sharma)

47. The defendant No.2 denied the existence of letter dated 02.12.1989. As per her contention, Sri G.Seshendra Sharma married her in the year 1971 and resided with her till his death on 30.05.2007 at Gyan Bagh Palace and no document was executed by him at that time. She contended that the letter dated 02.12.1989 was a

false and fabricated document. As per the plaintiff, the letter dated 05.01.2006 marked under Ex.B6 (Ex.B3) was a fabricated document.

48. The defendant No.2 was examined as DW.2. In her cross-examination, she stated that late Sri G.Seshendra Sharma was her husband for 23 years. She was married with Sri G.Seshendra Sharma on 06.06.1971. She admitted that she had not filed any document before the Court to show that she was married with him on 06.06.1971. She admitted that prior to her marriage with Sri G.Seshendra Sharma, he was already married with another lady. His first wife was Smt.Janakamma and his first wife gave consent before the Police for her marriage with Sri G.Seshendra Sharma. She admitted that Ex.A2 dated 02.12.1989 was in the hand writing of Sri G.Seshendra Sharma and that she could identify the writing and signature of Sri G.Seshendra Sharma on Ex.A2 and further stated that she did not say Ex.A2 was a fabricated one.

49. Thus, though, she denied in her written statement that Ex.A2 was a fabricated document, admitted in her cross-examination that it was a genuine document signed by Sri G.Seshendra Sharma and also identified the writing of Sri G.Seshendra Sharma on it. Though, she contended that Sri G.Seshendra Sharma had transferred all the copyrights on his literary works to her by cancelling all the previous transfers for a period of 30 years under Ex.B3 dated 05.01.2006, admitted

in her cross-examination that the signatures on Exs.A2 and B3 were different from each other. She reported no objection for sending Ex.B3 to forensic expert.

50. The said document was sent by the plaintiff through the Court to forensic expert to compare it with the signature of Sri G.Seshendra Sharma on Ex.A2, which was admitted by DW.2. She also admitted that the plaintiff was the younger son of Sri G.Seshendra Sharma and Sri G. Seshendra Sharma had love and affection towards his children.

51. She stated that on 14.08.2002, Sri G.Seshendra Sharma gave her the copyrights on all his literary works by cancelling all previous transfers. There was a written letter from Sri G.Seshendra Sharma dated 14.08.2002. She got marked the said letter as Ex.B12. On a perusal of Ex.B12, it was the license given by Sri G.Seshendra Sharma for publication of his book "Adhunika Mahabharatam" (Epic) in Telugu to Sahitya Academy granting license to publish his work in all the Indian Languages enumerated in the Constitution of India. At column No.6, the name of the copyright owner is mentioned as Guntur Seshendra Sharma and at column No.7 pertaining to relation of copyright owner with the author, it was mentioned that the author was the copyright owner, but in brackets, it was mentioned as (now copyright owner should be his wife Rajkumari Indira Devi Dhanrajgir).

52. In her cross-examination with regard to Ex.B12, DW.2 (defendant No.2) stated that the original of Ex.B12 was with Sahitya Academy. The witness admitted that Ex.B12 was only a photo copy. The said document was marked subject to objection raised by the counsel for the plaintiff. The validity of the said document was not decided by the trial court while deciding the matter. Ex.B12, being a photocopy and not signed by any of the authorized signatory of Sahitya Academy is not a valid document. As such, no relevance can be placed upon Ex.B12.

53. The handwriting expert who examined the said documents was examined as a Court Witness as CW.1. CW.1 was the Assistant Director in TSFSL. He stated that he received the standard signature of Sri G.Seshendra Sharma on Ex.A2 marked as “S” to compare it with the questioned signature marked as “Q” on Ex.B3 and on thoroughly examining the said documents, he gave his opinion as “the red enclosed signature marked as “Q” was through a printing process and not executed with any writing instrument”. His opinion was marked as Ex.X1.

54. In his cross-examination by defendant No.2, he stated that Ex.A2 was written with a writing instrument (pen). He examined it in enlarged form under the instrument and found it to be written with a writing instrument (pen). He had not given any opinion with regard to the signature on Ex.A2. Ex.A2 was the standard

signature received from the Court. The process for examination was by method of comparison in enlarged format under the instruments. Optimal examination was one of the examinations conducted by him in the instrument. He stated that Ex.B3 was a laminated document. The lamination of Ex.B3 was not an obstruction for his examination. He examined by way of physical examination. No chemical tests were carried out over the document. He stated that it was not possible to determine which printer was used to print the signature on Ex.B3. He could not say the type of printer used in Ex.B3, whether it was a laser printer, impact printer or a dot matrix printer. He could not say the nature of ink used to print the signature on Ex.B3. It was not possible to mention the nature of printing, the nature of ink that was used for printing the signature on Ex.B3. Whatever the nature of paper, it was possible to ascertain whether it was printed signature or hand written signature. With the support of instruments he could examine and mention his observations in Para 2 of Ex.X1.

55. The contention of the learned counsel for the appellant was that when the appellant – defendant No.2 denied the existence of Ex.A2 in her written statement as well as in her deposition, the Court ought not to have forwarded Ex.A2 as a standard signature. But the defendant No.2 examined as DW.2 admitted the genuinity of Ex.A2, identified the writing and signature of Sri Guntur Seshendra

Sharma on it and that the plaintiff was the son of Guntur Seshendra Sharma and that he had love and affection towards his children. The said objection was also not taken by the learned counsel for the appellant – defendant No.2 while referring the matter to the expert. Hence, the objection taken at this stage has no validity.

56. The learned counsel for the appellant relied upon the judgment of the Hon'ble Apex Court in **Prem Prakash @ Lillu and Another v. State of Haryana** (cited supra), on the aspect that:

> "19. The evidence, essentially, must be viewed collectively. The statement of a witness must be read as a whole. Reliance on a mere line in the statement of the witness, out of context, would not serve the ends of justice and the conclusion of the court based on such appreciation of evidence could be faulted."

57. But, the admission of DW.2 about Ex.A2 in her cross-examination was not something which could be ignored. It was not out of context. When the entire case of the plaintiff was based upon Ex.A2 and when defendant No.2 specifically approached this Court by filing C.R.Ps. and got filed an additional written statement contending that Ex.B2 was a false and fabricated document, her admission in cross-examination that the signature and writings on Ex.B2 pertains to her husband Sri G.Seshendra Sharma is very much relevant and material. The witness is not an illiterate woman. She was a highly qualified woman studied at

Cambridge University. As per her evidence, she was a re-knowned poet and writer who received several accolades from various institutions and who was acquainted with the hand writing of Sri G.Seshendra Sharma by her interaction with him for the past 23 years alleging to be his wife.

58. As per her cross-examination, Sri G.Seshendra Sharma used to write books in his own hand writings and in English. He used to dictate and she used to type the same. As such, her evidence on this crucial aspect is significant and the trial court rightly placed reliance on it. The defendant No.2 or her lawyer had not raised any objections while sending Ex.A2 as a standard signature to TSFSL for comparison along with Ex.B3 (Ex.B6). Thus, the objection raised by the learned counsel for the appellant at this stage holds no ground.

59. The learned counsel for the appellant placed reliance upon the judgment of the Hon'ble Apex Court in **Tomaso Bruno and Another v. State of Uttar Pradesh** (cited supra), on the aspect that:

> "40. The Courts normally would look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory and unsustainable. We agree that the purpose of an expert opinion is primarily to assist the court in arriving at a final conclusion but such report is not a conclusive one. This Court is expected to analyze the report, read it in conjunction with the other evidence on record

> and then form its final opinion as to whether such report is worthy of reliance or not."

60. The learned counsel for the appellant relied upon the judgment of the Hon'ble Apex Court in **The State of Gujarat v. Vinaya Chandra Chhota Lal Pathi** (cited supra) on the aspect that:

> "The opinion of a hand writing expert is also relevant in view of Section 45 of the Evidence Act, but that too is not conclusive. It has also been held that the sole evidence of a handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not."

61. The evidence of hand writing expert is not conclusive in nature and there is no doubt that it has to be read with other evidence on record and the Court shall form its independent opinion as to whether such report is worthy of reliance or not. The evidence of the expert would only disclose that the standard signature was written with a writing instrument (pen) and the questioned signature was printed through a printing process and not executed with any writing instrument. The cross-examination of this witness with regard to the type of printer used, the nature of ink that was used in printing the signature on Ex.B3 was completely irrelevant. Even with a naked eye, it could be stated that Ex.B3 (Ex.B6) was not in the hand writing of the author Sri G.Seshendra Sharma and it was printed through a printing process. When the said document, which was in a typed format was not signed by

the author in his hand writing and when his signature was attested on the said document by a printing process, the authenticity of the Ex.B3 (Ex.B6) cannot be believed.

62. Thus, Ex.A2 being in the handwriting of Sri G.Seshendra Sharma and signed by him is a valid document to consider that the author had assigned all his copyrights of his works to the plaintiff, who is none other than his son and Ex..B3 (Ex.B6) is not an authentic document to consider that Sri G.Seshendra Sharma had revoked the copyrights assigned to the plaintiff and reassigned to defendant No.2.

63. Thus, points 1 and 2 can be answered holding that the plaintiff was assigned copyrights under Ex.A2 by Sri G.Seshendra Sharma and the same was not cancelled and not re-assigned to defendant No.2 under Ex.B3 (Ex.B6).

P O I N T No.3:

Whether the suit was barred by limitation, acquiescence and estoppel?

64. The defendant No.2 in her written statement contended that the suit was barred by limitation; the plaintiff was fully aware that defendant No.2 in 2002 itself under the copyright given by her late husband Sri Seshendra Sharma given license to Sahitya Academy for publication of Kannada translation of "Adhunika Mahabharatam", but kept silent till the death of his father and was using the excuse

of public notice by defendant No.2 to overcome the ground of limitation. The plaintiff acknowledged the fact of his knowledge that his father granted copyright in favor of defendant No.2 as early as 2002 in his plaint. She had also taken the defence that the plaintiff had acquiesced by sitting by, when defendant No.2 was invading his rights and spending money on it. His conduct was inconsistent with the claim for exclusive rights in the copyright. The plaintiff had not taken any positive steps for all these years and his mere silence or inaction would show latches on his part. The acquiescence on the part of the plaintiff can be inferred as license sufficient to create a new right in defendant No.2.

65. The defendant No.2 also contended that no publication had come forth in the first 12 months after assignment of copyright to the plaintiff and assuming without admitting that late Sri Seshendra Sharma had assigned copyrights in favor of the plaintiff, the same would be valid only for five years. He did not bother to publish any of his father's works until 1995 when the copyright would have lapsed.

66. The learned counsel for the appellant had relied upon the judgment of the Hon'ble Apex Court in **Assistant Commissioner (CT) LTU, Kakinada and Others v. Glaxo Smith Kline Consumer Health Care Limited**[10], wherein it was held that Section 5 of the Limitation Act, 1963 cannot be invoked by the Court for

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[10] (2020) 19 SCC 681

maintaining an appeal beyond the maximum prescribed period under Section 125 of the Electricity Act.

67. She also relied upon the judgment of the Hon'ble Apex Court in **Bharat Sanchar Nigam Limited and Another v. Nortel Networks India Private Limited**[11], wherein it was held that:

> “Section 11 does not prescribe any time period for filing an application under sub-section (6) for appointment of an arbitrator. Since there is no provision in the 1996 Act specifying the period of limitation for filing an application under Section 11, one would have to take recourse to the Limitation Act, 1963, as per Section 43 of the Arbitration Act, which provides that the Limitation Act shall apply to the arbitrations, as it applies to proceedings in Courts.”

68. She relied upon the judgment of the Hon'ble Apex Court in **Thakamma Mathew (Smt.) v. M.Azmathullu Khan & Others**[12], wherein it was held that

> “In view of Article 54 of the Limitation Act, 1963, a suit for specific performance of contract has to be filed within three years of the date fixed for the performance or if no such date is fixed where plaintiff has noticed that performance is refused.”

69. She also relied upon the judgment of the Hon'ble Apex Court in **Saligram Ruplal Khanna & Another v. Kanwar Rajnath**[13] on the aspect that the period of

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[11] (2021) 5 SCC 738
[12] 1993 Supp (4) SCC 492
[13] (1974) 2 SCC 642

limitation for filing a suit for rendition of accounts is three years from the date of dissolution of partnership firm.

70. She relied upon the judgment of the Hon'ble Apex Court in **Balakrishnan v. Malaiyandi Konar**[14], wherein it was held that the limitation for the purpose of Article 134 starts from the date of confirmation of sale.

71. She further relied upon the judgment of the Hon'ble Apex Court in **D.S.Lakshmaiah & Another v. L.Balasubramanyam & Another**[15], wherein it was held that:

> "The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available."

72. All the above judgments have no relevance to the case on hand.

73. Acquiescence is a legal doctrine that arises when a party, through its actions / in-actions, appears to accept or tolerate a situation or conduct that would

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[14] (2006) 3 SCC 49
[15] (2003) 10 SCC 310

otherwise constitute an infringement of their rights. Acquiescence is based on the principle that a party cannot lead another party to believe that their conduct is acceptable and then later claim infringement.

74. The learned counsel for the appellant relied upon the judgment of the Hon'ble Apex Court in **Jai Narain Parasrampuria (Dead) and Others v. Pushpa Devi Saraf and Others** (cited supra), on the aspect that:

> "33. While applying the procedural law like the principle of estoppel or acquiescence, the Court would be concerned with the conduct of a party for determination as to whether he can be permitted to take a different stand in a subsequent proceeding, unless there exists a statutory interdict."

> "41.The doctrine of estoppel by acquiescence was not restricted to cases where the representor was aware both of what his strict rights were and that the representee was acting on the belief that those rights would not be enforced against him. Instead, the court was required to ascertain whether in the particular circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he had allowed or encouraged another to assume to his detriment. Accordingly, the principle would apply if at the time the expectation was encouraged."

75. The doctrine of estoppel is a legal principle that prohibits a person from denying or asserting something contrary to what they had previously stated or done. It is a rule of evidence that prevents a party from denying the truth of a statement

that they had previously made. To establish the defence of estoppel, the defendants have to establish that:

1. The plaintiff must know the facts underlying the defendants’ alleged infringement.

2. The plaintiff must intend the defendant to rely upon the plaintiff's conduct or must act in a way that gives the defendant the right to believe the plaintiff intended reliance.

3. The defendant must be ignorant of the true facts.

4. The defendant must rely on the plaintiff's conduct to its detriment.

In copyright cases, the doctrine is primarily used to protect defendants from infringement liability where plaintiff's past behavior led the defendants to reasonably believe that they were not infringing on the plaintiff's copyright.

76. To prove the above defences, the defendants must establish that the plaintiff had full knowledge of infringement of his right, but had kept silent and slept over his right and allowed defendant No.2 to publish the books, but had not issued any notice or objected the defendant No.2. But, the publication / printing of the books and their availability in the market is a continuous cause of action. As such, the suit is not barred by limitation.

77. With regard to the contention of the learned counsel for the appellant that the appellant failed to exercise his rights within five years from the date of Ex.A2 or failed to publish any books within 12 months from the said date, the learned trial court gave a finding that it was clear from Section 19(7) of Copyright Act, 1957 that Sub-Sections 2 to 6 of Section 19 were not applicable to the assignments made before coming into force of the copyright (Amendment) Act, 1994. The said Amendment Act, 38 of 1994 came into force with effect from 10.05.1995. Since the assignment under Ex.A2 was made on 02.12.1989, prior to the copyright Amendment Act, 1994, the provisions under Sub-Sections 4 and 5 of Section 19 of copyright Act were not applicable to Ex.A2. This Court approves the said finding recorded by the trial court.

78. As such, the suit was not barred by limitation, acquiescence or estoppel.

P O I N T No.4:

Whether the judgment of the trial court is in accordance with law and facts on record or whether the same needs any interference by this Court?

79. On perusal of the judgment of the trial court, the same was based on appreciation of the oral and documentary evidence on record adduced by both the parties and on considering the law of Copyrights Act, 1957 applicable to the facts

of the case. As such, this Court does not find any illegality or error in the judgment of the trial court which requires any interference by this Court.

P O I N T No.5:

To what result?

80. In the result, the appeal is dismissed confirming the judgment of the trial court dated 07.02.2018 passed in O.S.No.419 of 2008 by the XI Additional Chief Judge, City Civil Court, Hyderabad.

No order as to costs.

As a sequel, miscellaneous applications pending in this appeal if any, shall stand closed.

Dr. G.RADHA RANI, J

Date: 25th January, 2024
Nsk.